judicial principles. Where does the balance of convenience lie? Is it in granting or refusing it? If damages can be ascertained then injunction should also be refused. Would damages of the applicant be adequate if the injunction is refused. The value of the lands charged which had been foreclosed can easily be ascertained at any given time and if the plaintiff wins in CS 1098/87 and the lands charged should not have been foreclosed, what has to be paid by the chargee in damages can be easily ascertained.

The injunction to my mind cannot also be granted for another very good reason. I agree with the submission of counsel for the chargee that there is no jurisdiction of this court to restrain the order of another High Court of co-ordinate jurisdiction (see *Bina Satu Sdn Bhd* v *Tan Construction*[10]).

Even if the court could give the order to restrain, the court concludes that this matter is res judicata in the broad sense as the matters raised could have been raised in the foreclosure proceedings. I find the authority in *Yat Tung Investment Co Ltd* v *Dao Heng Bank Ltd & Anor*[8] binding on this court where it was held that matters which could have been raised earlier should have been raised in the earlier proceeding and to raise again here is an abuse of the process of the court.

Taking the application for injunction as a whole, the balance of convenience lies in refusing this application for injunction. For the reasons given I therefore refuse it. Application for injunction is also dismissed with costs to be taxed.

Application dismissed.

Solicitors: *Thara Singh Sidhu*; *Skrine & Co.*

Reported by *Ng Sheau Jiuan*

Bank Bumiputra Malaysia Bhd v Mahmud bin Haji Mohamed Din (Datin Hajjah Salma bte Md Jamin, Intervener)

HIGH COURT (IPOH) – ORIGINATING SUMMONS NO 31-1642-86
PEH SWEE CHIN J
4 OCTOBER 1988

Land Law – Priority of interests under National Land Code 1965 – Intervener purchased land from chargor before chargee's interest was registered – Whether intervener's interest being earlier in time was stronger in law – National Land Code 1965, s 340

Land Law – Statutory notice of default under National Land Code stated breach continued for seven days – Breach in fact continued for only six days – Whether irregularity affected root of chargee's rights – National Land Code 1965, s 254 Form 16D

The plaintiff was a chargee of five pieces of land and had applied to the court for an order, inter alia, that the land be sold by public auction. Before the hearing, the intervener applied and was allowed to intervene in the proceedings on the ground that she was a purchaser of one of the five pieces of land. The intervener raised two grounds of objections: (a) the statutory notice of default in form 16D issued under s 254 of the National Land Code 1965 was defective because though it mentioned that the breach of a provision of the charge had continued for a period of seven days prior to the date of the said statutory notice of default, such breach in fact had continued not for a full seven days but for a period of about six days; (b) the sale agreement between the defendant chargor and intervener was signed on 19 June 1980 while the new charge was created and registered by the chargee in 1983. As such, the intervener's interest, being earlier in time, was stronger in law.

Held, dismissing the intervener's objections:

(1) The money lent in the instant case was expressly made repayable on demand. The statutory notice of default must have been enacted with the object of giving sufficient notice to a chargor before an order of sale by public auction is applied for. Such an object was patently complied with in regard to the sum which was repayable on mere demand on the facts in this case. The minor irregularity complained of did not go to the root of the chargee's rights.

(2) The chargee, being a registered chargee, had attained an indefeasible title against the world save for a few exceptions as set out in s 340 of the National Land Code. As the exceptions did not apply in the instant case, the supervening title would defeat a prior equitable right or interest.

[*Editorial Note*: The intervener has appealed to the Supreme Court vide Civil Appeal No 362 of 1988.]

Cases referred to

1 *Jacob* v *Overseas Chinese Banking Corporation* [1974] 2 MLJ 161 (folld)
2 *Tan Kai Kok* v *Thor Teik Seng* [1935] MLJ 91 (refd)
3 *Ong Chat Pang* v *Valliappa Chettiar* [1971] 1 MLJ 224 (refd)

Legislation referred to

Interpretation Act 1967 s 26
National Land Code 1965 ss 254, 340, Form 16D

Lalchand Nathermal for the plaintiff.
Mohd Shahrom Mohamad for the defendant.
Hira Singh for the intervener.

Cur Adv Vult

Peh Swee Chin J: In this case, the plaintiff (hereinafter called 'the chargee'), chargee of five pieces of land described in this originating summons, applied to the court for an order that the same be sold by public auction and for other consequential orders and directions. The defendant (hereinafter called 'the chargor') opposed the same. Before the hearing of the originating summons herein, the intervener applied and was allowed to intervene in the proceedings on the ground that she was a purchaser of one of the five pieces of land in respect of which an order for sale by public auction was being sought by the chargee.

In the result, the chargee's claim was granted in terms of the originating summons over the objections of both the chargor and intervener. Only the intervener has now appealed and I will now give my grounds of judgment only with regard to and with specific reference to the points raised by the intervener's counsel before me.

The first point taken was that the statutory notice of default in Form 16D issued under s 254 of the National Land Code was defective because though it, inter alia, mentioned that the breach of a provision of the charge had continued for a period of seven days prior to the date of the said statutory notice of default, such breach in fact had continued, not for a full seven days but for a period of about six days or a period short of seven days. This came about because the solicitors' notice of demand was dated 11 July 1986 and the said notice of demand itself gave 14 days' time from 11 July 1986 to repay on demand the sum in question. Such 14 days would expire, according to counsel, on 25 November 1986, a date on which the breach of the provision to pay on demand began, and since the said statutory notice of default bore the date of 1 August 1986, the breach had continued for just less than seven days before the issue of the statutory notice of default. Such an agreement was, of course, extremely legalistic in the circumstances.

It must be borne in mind, when considering this argument, that the money lent in the instant case was expressly made payable on demand. The statutory notice of default must have been enacted with the object of giving sufficient notice to a chargor before an order of sale by public auction is applied for: *Jacob* v *Oversea-Chinese Banking Corpn.*[1]

In my view, such an object was patently complied with in regard to the sum which was repayable on mere demand on the facts above. The learned Lord President Suffian, in giving judgment in *Jacob's* case,[1] also referred to s 26 of the Interpretation Act 1967 about any deviation in form which had no substantial effect, not invalidating the statutory notice of default therein. I respectfully adopt the same argument as after all the minor irregularity complained of did not go to the roots of the chargee's rights: *Tan Kai Kok* v *Thor Teik Seng.*[2]

The second point raised briefly by the intervener was that she signed the sale agreement in respect of one of five pieces of land as purchaser together with the chargor as vendor on 19 June 1980 while the new charge in connection with her piece of land was created and registered by the chargee in 1983. She was an innocent purchaser for value and the title of her land did not bear the endorsement of any charge when she bought it.

Before I comment on the submission stated above, I shall like to make it clear that though the facts of any given case may sometimes give rise to all sorts of speculative issues, however, at the end of the day, it is only the issues, whether on questions of law or fact, which are specifically and actually raised or pleaded that invite the adjudication by the court which cannot go outside the pleadings or statements in the nature of the pleadings.

It was with this attitude that the court's manner of dealing with the aforesaid submission ought to be reviewed.

It was only too obvious to the court that the ground of the intervener's claim was one of priority over the charge in question as registered on the title which she had agreed to purchase by the sale agreement because she had bought the land long before the charge was registered, in other words, qui prior est tempore potior est jure, ie he who is earlier in time is stronger in law.

Here, the chargee, being a registered chargee, had attained, as regards its registered interest, an indefeasible title against the world save for a few exceptions as set out in s 340 of the National Land Code such as fraud, misrepresentation etc to which the chargee was a party or privy, and which did not apply to the facts of the instant case.

When the exceptions in the said s 340 do not apply as they did not apply to the instant case, the supervening title would defeat a prior equitable right or interest: *Ong Chat Pang* v *Valliappa Chettiar.*[3] The chargee, to quote a familiar expression, had therefore succeeded in the scramble to get on the register and had therefore emerged victorious.

The second point of objection therefore had no merit also.

In the circumstances, the intervener had failed to show cause to this court why the charged land in question should not be sold by public auction. I therefore made the order of sale by public auction and other consequential orders or directions as prayed with costs to the chargee/plaintiff.

Order accordingly.

Solicitors: *Lalchand, Nawawi, Phang & Co; Zaid Ibrahim & Co; Asbir, Hira Singh & Co.*

Reported by *Ng Sheau Jiuan*